rights in the articles attached. *Hannahs* v. *Felt*, 15 Iowa, 141. There is authority, however, *contra*. *Freiberg* v. *Singer*, 90 Wis. 608. But after an attaching creditor has got judgment he has virtually a mortgage given him by law; and it would appear, therefore, that he then has a legal property right in the attached goods. This seems to be presupposed in the decision that state exemption laws undertaking to cut off existing attachments after judgment are unconstitutional as impairing the obligation of contracts. *Gunn* v. *Barry*, 15 Wall. 610. But, although there was, therefore, a deprivation of property in a strict sense of the term, the principal case may well be supported on the second ground. "Due process of law" is an historic phrase equivalent to "the law of the land," and prevents only an arbitrary exercise of legislative power. *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244. See Cooley, Const. Lim. 6th ed. 431. Much may be done by a legislature to cure defects of form in past transactions in order to bring about equitable results. *Campbell* v. *Holt*, 115 U. S. 620; *Mechanics, etc. Savings Bank* v. *Allen*, 28 Conn. 97. Although the attaching creditor has a legal property right, yet it is difficult to say that it is arbitrary to prevent him from enforcing it against a mortgage of which he had notice. The argument of the court, "that there is no such thing as a vested right to do wrong," seems to amount to very much the same thing. *Foster* v. *Essex Bank*, 16 Mass. 245, 273. It may well be doubted whether this act of Congress would not be unconstitutional, as against an attaching creditor without notice of the mortgage. *Williamson* v. *N. J., etc. R. Co.*, 29 N. J. Eq. 311, 333 (*semble*). But since in the principal case there was such notice, the effect of the act here would seem not to have been arbitrary, and therefore not within the prohibition of the Fifth Amendment.

It should not be overlooked, however, that in order to reach a contrary result, it must also be maintained that Congress is constitutionally bound by the amendments in governing the territories. Nevertheless, since the case may be supported on other grounds, the court's failure to discuss the point seems appropriate, in view of the fact that at the time of the decision light on that question was soon to be expected from the Supreme Court of the United States.

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EXTRADITION IN THE ABSENCE OF TREATIES. — Before extradition treaties were as common as at present, the question was important whether the President had power to extradite a criminal to a country with which there was no treaty. There has been but one case where the President exercised the power, and the action was so hastily completed that its legality was not brought before the courts. *Arguelle's Case*, Dana's Wheaton, § 115, note 73. To support the power of the President so to act, it seems necessary to adopt the view that since the United States is a sovereign nation, all powers usually belonging to sovereigns adhere to the federal government, unless by the constitution reserved to the states or to the people. This principle, however, is at least open to the objection that the federal government is not the sovereign of the United States, and that the delegation of a particular power or function to any department of the government is not lightly presumed. For "the government of the United States can claim no powers which are not granted to it by the constitution; and the powers actually granted must be such as are expressly given or given by necessary implication." Marshall, C. J., in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 326.

Moreover, the rule that the President has no power, as well as no duty, to surrender a fugitive in the absence of a treaty of extradition, has been generally accepted. *Ex parte M'Cabe*, 46 Fed. Rep. 363; Spear, Extradition, 13; Wharton, International Law Digest, § 268; *Washburn's Case*, 4 Johns. Ch. Rep. 106 (*semble*, *contra*).

The question whether Congress has this power has never been considered to any extent, since, until recently, Congress has not attempted to regulate or provide for extradition except to countries having extradition treaties with the United States. As extradition is essentially an executive function, the power of extraditing in the absence of treaties, if existing, would most naturally seem to appertain to the executive, and the only way in which to support the right of Congress so to provide for extradition appears to be the broad ground that Congress has power to pass any law not prohibited by the constitution. It may be that it is desirable to adopt a principle that will sustain the power in question either in the President or in Congress; but any principle that will reach this result is hardly consistent with the former rule of constitutional construction that the federal government is one of delegated powers only.

If Congress has this power, the Supreme Court has recently missed an opportunity of recognizing its existence. *Neeley* v. *Henkel*, 21 Sup. Ct. Rep. 302. The court affirmed the judgment of the lower court in denying the application for a writ of *habeas corpus* made by Neeley, who was detained pending extradition to Cuba under the provisions of the act of June 6, 1900, providing for the extradition of criminals in certain cases "to foreign countries or territories . . . occupied by or under the control of the United States." 31 Stat. 657, ch. 793. The constitutionality of this act was upheld upon the ground that it was a proper means of carrying out the duty assumed by the United States in the treaty of Paris, to "discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property." 30 Stat. 1755. The case is probably correctly decided, upon the grounds intimated by the court. But the question of the power of Congress to pass such a statute in the absence of a treaty obligation is expressly left undecided; the determination of that question must await an attempt to extradite to a country occupied by the United States during a future war, or, since the obligation of the treaty does not extend to Porto Rico or the Philippines, an attempt to extradite to those islands, should they be considered a "foreign country or territory" within the meaning of the act.

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Recognition of Trustees at Law. — A trustee in his representative capacity, as distinguished from his personal capacity, unlike an executor, has never been recognized as a separate person by the common law. Yet the possibility of such a recognition arising was suggested by a recent case. *Parmenter* v. *Barstow*, 47 Atl. Rep. 365 (R. I.). The plaintiff brought action against the defendant "as trustee," alleging that, owing to the negligence of a stone-cutter employed on the trust property, her eye had been put out by a piece of flying stone. The court held that, if the defendant was liable, it was in his personal, not in his representative capacity, and on this ground sustained a demurrer. Although no situation is mentioned in which judgment ought properly to be given out of the trust estate against the trustee as such, to be levied on the trust estate,